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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 GREG BALLARD,

9 Plaintiff,

10 v.

11 BANK OF AMERICA, N.A., et  
12 al.,

13 Defendants.

CASE NO. C10-5668BHS

ORDER DENYING MOTION  
FOR REMAND AND  
RESERVING RULING ON  
DEFENDANT'S MOTION TO  
DISMISS

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15 This matter comes before the Court on Plaintiff's ("Ballard") motion for remand  
16 (Dkt. 15) and Defendant BAC Home Loans Servicing, L.P.'s ("BAC") motion to dismiss  
17 under Fed. R. Civ. P. 12(b)(6) (Dkt. 6). The Court has considered the pleadings filed in  
18 support of and in opposition to the motions and the remainder of the file and hereby  
19 denies Ballard's motion for remand and reserves ruling on BAC's motion to dismiss for  
20 the reasons stated herein.

21 **I. PROCEDURAL AND FACTUAL HISTORY**

22 On August 16, 2010, Ballard filed his complaint against multiple defendants in  
23 Pierce County Superior Court (case no. 10-2-12111-6). Dkt. 2. On September 17, 2010,  
24 BAC removed the action pursuant to this Court's diversity jurisdiction. Dkt. 1.

25 On September 24, 2010, BAC moved for a Rule 12(b)(6) dismissal of all claims.  
26 Dkt. 6. Ballard did not file a response. On October 5, 2010, Ballard filed a motion to  
27 remand. Dkt. 15 (styled as a "Motion for Order to Show Cause"). On October 18, 2010,  
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1 BAC opposed the motion to remand. Dkt. 16. Ballard filed his reply on October 20, 2010.  
2 Dkt. 17.

## 3 II. DISCUSSION

### 4 A. Ballard's Motion for Remand

5 It is well settled that federal district courts have original jurisdiction over claims  
6 between "citizens of different states" where the amount "in controversy exceeds the sum  
7 of \$75,000." 28 U.S.C. § 1332(a); *see, e.g. Valdez v. Allstate Ins. Co.*, 372 F.3d 1115,  
8 1117 (9th Cir. 2004). Ballard's complaint is brought against diverse defendants and the  
9 amount in controversy exceeds \$75,000. *See* Complaint; Dkt. 1. Therefore, this Court has  
10 original jurisdiction over this cause of action.

### 11 B. BAC's Motion to Dismiss


12 Rule 12 of the Federal Rules of Civil Procedure informs a plaintiff of what must be  
13 shown in order to defeat a motion to dismiss under Fed. R. Civ. P. 12(b)(6). Generally, a  
14 motion under this rule must be granted when a plaintiff has failed to state a claim for  
15 which the law provides relief or the plaintiff has failed to plead facts that would support a  
16 theory available under the law—that is, where either the law cannot help the plaintiff, or  
17 the plaintiff cannot provide facts sufficient to support a case under the law, the party who  
18 asked for dismissal is entitled to judgment, which will end a plaintiff's case. When, as  
19 here, the motion to dismiss is based on an alleged failure to plead facts to support a  
20 cognizable legal theory, a plaintiff may not be able to simply rely on what is stated in the  
21 complaint. Instead, where a complaint is factually deficient, a plaintiff must set out  
22 specific facts in declarations, or authenticated documents, or an amended complaint that  
23 contradicts the facts shown in a defendant's documents and shows that there are facts  
24 that, if believed, would support a cognizable legal theory. If Ballard does not adequately  
25 respond to BAC's motion to dismiss under Fed. R. Civ. P. 12(b)(6), dismissal may be  
26 granted.  
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1 Ballard has until December 8, 2010 to respond to BAC's motion to dismiss. While  
2 a response is not mandatory, Ballard's failure to respond to BAC's motion will likely  
3 result in dismissal of his claims. BAC may file a reply no later than December 15, 2010.<sup>1</sup>

4 **III. ORDER**

5 Therefore, it is hereby **ORDERED** that Ballard's motion for remand (Dkt. 15) is  
6 **DENIED**, and the Court **RESERVES** ruling on BAC's motion to dismiss (Dkt. 6).

7 DATED this 16th day of November, 2010.

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10 BENJAMIN H. SETTLE  
11 United States District Judge  
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27 <sup>1</sup>Because BAC's original reply (Dkt. 18) was based on Local Rule 7(b)(2), the  
28 Court will permit BAC to file an amended reply should Ballard file a response.